SECURE ACT 2.0: What Plan Sponsors and Employers Need to Know

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SECURE 2.0

- The Consolidated Appropriations Act, 2023 signed into law on 12/29/2022
- Division T – SECURE 2.0
- Landmark legislation: over 90 changes to retirement plans

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Auto-Enrollment

- What Retirement Plans are impacted?
  - Only affects 401(k) and 403(b) retirement plans that are adopted in 2023 and after.
  - Pre-existing retirement plans are "grandfathered" in.
  - Small employers (10 or fewer employees), governmental plans and church plans are exempt.
- How do plans comply with the new auto-enrollment rules?
  - Automatically enroll eligible employees into the retirement plan upon hire at a minimum deferral rate of 3%.
  - Automatically escalate all participants' deferral rates by 1% annually up to a maximum deferral rate of at least 10%, but no more than 15%.

Student Loan Repayments

- Starting in 2024, employers can treat student loan repayments made by employees as elective deferrals into a 401(k) plan, 403(b) plan or SIMPLE IRA for purposes of receiving matching contributions.
- Student loan debt is broadly defined.
- Optional – employers are not required to amend their retirement plans to adopt this new rule.

Roth Contributions & Highly Compensated Employees (HCEs)

- What are Roth Contributions?
  - Contributions made on a post-tax basis that are exempt from income taxation upon distribution.
- Who is affected by the new Roth rules?
  - HCEs ($145,000+ annual salary) who are making catch-up contributions in 2024 and after.
- What do the new rules require?
  - All catch-up contributions by HCEs must be made on a Roth basis.
- New Roth rules are mandatory – all retirement plans that allow catch-up contributions must be amended to incorporate the new rules.

“Rothification” of Vested Matching Contributions

- What does the new rule allow?
  - If the plan sponsor amends the plan to allow, participants can elect to treat vested employer matching contributions and nonelective contributions as Roth contributions.
- How does the new rule affect participants?
  - If participants elect to “rothify” their vested employer matching / nonelective contributions, the participant will be taxed on the contributions in the year of the election, but the distribution (with earnings) will be tax-free.
- When does the new “rothification” rule go into effect?
  - December 29, 2022.
- The new “rothification” rules are optional and employers are not required to adopt these changes.

403(b) Plan Changes

- Secure Act 2.0 allows multiple employers to participate in a single 403(b) plan – i.e. a multiple employer 403(b) plan.
- One bad apple rule was eliminated.
  - Violations by one employer in the multiple employer 403(b) plan will not affect the other employers.
- Effective January 1, 2023, and after.

SECURE ACT 2.0 Updates to EPCRS Correction Procedures

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Background of EPCRS

- The current IRS Employee Plans Compliance Resolution System (EPCRS) is set out in IRS Revenue Procedure 2021-30.
- EPCRS offers plan sponsors the opportunity to correct mistakes with the administration of their retirement plans, whether it is a plan document failure or an operational failure.
- EPCRS is a important tool for plan sponsors because it allows plans to avoid the consequences of plan disqualification which would occur if failures were not corrected and the failure was discovered during an IRS audit.
- EPCRS sets out specific corrections for various failures and it sets out three processes that can be used to correct the failures: self-correction; voluntary correction and the audit closing agreement program.

EPCRS -Expanded Use of Self-Correction for Eligible Inadvertent Errors

- Historically, self-correction was only permitted to correct specific administrative failures that were either insignificant or were corrected within a set time period.
- Under SECURE Act 2.0, EPCRS has been significantly expanded to allow plan sponsors to use self-correction for eligible inadvertent failures at any time, except if:
  - such failure was identified by the IRS prior to any actions which demonstrate a specific commitment to implement a self-correction with respect to such failure, or
  - the self-correction is not completed within a reasonable period after such failure is identified.

EPCRS -Expanded Use of Self-Correction for Eligible Inadvertent Errors

- An Eligible Inadvertent Failure is a failure that occurs despite the existence of practices and procedures which satisfy standards set out in section 4.04 of Revenue Procedure 2021-30.
- The term “eligible inadvertent failure” does not include any failure which is:
  - egregious,
  - relates to the diversion or misuse of plan assets, or
  - is directly or indirectly related to an abusive tax avoidance transaction.

EPCRS -Expanded Use of Self-Correction for Loan Errors

- An eligible inadvertent failure relating to a loan from a plan to a participant can now be self-corrected using the correction procedure set out under EPCRS.
- A self-corrected loan does not have to be reported as a deemed distribution on Form 1099-R.
- The DOL will treat any loan that is self-corrected under EPCRS as meeting the requirements of the DOL Voluntary Fiduciary Correction Program.

EPCRS Expanded to be Available to Other Retirement Vehicles

- Prior to the SECURE Act 2.0, only tax-qualified retirement plans (e.g. 401(k) and 401(a) plans) and 403(b) annuity plans were eligible to correct administrative failures under the EPCRS.
- SECURE Act 2.0 expands the availability of EPCRS to allow IRAs, SIMPLE IRAs and Simplified Employee Pension Plans (SEPs) to correct eligible inadvertent failures.

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Safe Harbor for Employee Elective Deferral Failures Under Automatic Enrollment Plans Is Now Permanent

- SECURE Act 2.0 makes the safe harbor for employee elective deferral failures under automatic enrollment plans permanent.
- Provisions of the safe harbor are the same.
  - Must still correct prior to 9½ months after the end of the plan year in which the failures occurred.
- The safe harbor can be used when the failure affects terminated employees.
- The correction is available even after the failure is identified by the IRS.

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Implementation of EPCRS Updates

- The changes were effective immediately upon enactment of SECURE Act 2.0 (December 29, 2022).
- The actual EPCRS Procedures have not yet been updated but the IRS is required to do so by the end of 2025.
- Until the IRS issues updated guidance to the EPCRS, the full extent of SECURE Act 2.0's changes to the self-correction procedures of the EPCRS will not be known.

Recovery/Correction of Retirement Plan Overpayments

- ERISA, the Internal Revenue Code and EPCRS all address recovery of overpayments.
- A Plan may, subject to specific requirements and limitations set by the IRS and DOL:
    - Decide not to recover inadvertent benefit overpayments made by the plan,
    - Reduce future benefit payments to the correct amount provided for under the terms of the plan, or
    - Seek recovery from the person or persons responsible for such overpayment.
- Employer is still obligated to make minimum funding contributions and to prevent or restore an impermissible forfeiture.
- Employer is still obligated to comply with IRC Section 401(a)(17) or IRC Section 415 limits using any method approved by the IRS for recouping benefits previously paid or allocations previously made in excess of such limitations.
- Nothing relieves a fiduciary from responsibility for an overpayment that resulted from a breach of its fiduciary duties.

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Effective Date and Certain Actions Before Date of Enactment

- Plans, fiduciaries, employers, and plan sponsors are entitled to rely on:
  - A reasonable good faith interpretation of then existing administrative guidance for inadvertent benefit overpayment recoupments and recoveries that commenced before the date of enactment of this Act, including the provisions under EPCRS, and
  - Determinations made before the date of enactment of SECURE Act 2.0 by the responsible plan fiduciary, in the exercise of its fiduciary discretion, not to seek recoupment or recovery of all or part of an inadvertent benefit overpayment.
- In the case of a benefit overpayment that occurred prior to the date of enactment of the SECURE Act 2.0, any installment payments by the participant or beneficiary to the plan or any reduction in periodic benefit payments to the participant or beneficiary, which were made in recoupment of such overpayment and which commenced prior to such date, may continue after such date.

Larger Catch-Up Limits for Participants Between Ages 60-63

- Raises catch-up limit, but only for years the participant turns 60, 61, 62, or 63
- 150% of the catch-up limit
- Begins in 2024
- Based on 2023 limit of $7,500, this means $11,250 limit would apply

Long-Time Part-Time Employee Coverage Changes

- Traditional Rule (i.e., pre Secure Act): a plan could require an employee to complete 1,000 hours of service during a 12 month period in order to participate in a 401(k) plan
- Secure Act Rule (2019): Employee who has three consecutive years with at least 500 hours and attains age 21 must be permitted to participant in elective deferral portion of the plan
- Secure 2.0 Rule (2022): Employee who has two consecutive years with at least 500 hours and attains age 21 must be permitted to participate in elective deferral portion of the plan

Long-Time Part-Time Employees: 2024 vs. 2025

- 2024 plan year must apply 2019 Secure Act Rule of three year eligibility
- 2025 plan year begins the new two year eligibility rule

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Employee Certification of Hardship Withdrawals

- Applies to 401(k), 403(b) and 457(b) plans
- Allows plan to rely on employee's written certification of the existing of a hardship (or for 457(b) plans, an unforeseeable emergency)
- IRS can issue regulations addressing situations where employer has contrary knowledge and cases of employee misrepresentations

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Increased Cash-Out Limit

- Cash-out limit on terminated, small, balance participants is currently $5,000
- Increased to $7,000, beginning on 2024

Required Minimum Distribution Ages

Year	Age
2020	72
2023	73
2033	75

Date of Birth	Required Beginning Date
Before July 1, 1949	70 ½
7/1/1949 to 12/31/1950	72
1/1/1951 to 12/31/1959	73
After 12/31/1958	75

Yes, there is a mistake for people born in 1959!

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Permanent Disaster Relief

- Distributions up to $22,000 for federally declared disasters
- Distribution taken within 180 days of disaster
- Tax spread over 3 years
- No 10% penalty
- Can be repaid to the plan within 3 years

Domestic Abuse Withdrawals

- Limited to $10,000 or 50% of vested benefits.
- Made during one year period following any date the participant is a victim of spouse or domestic abuse
- Self-certification by participant permitted
- Distribution repayable within three years
- No 10% penalty

Emergency Distributions

- 1 per year up to $1,000 for a personal or family emergency expense
- Unless repaid, no new distributions for three years
- Can rely on employee's certification.
- 10% penalty on distributions prior to 59½ does not apply

Emergency Savings Accounts (ESAs)

- Plans may create ESAs connected to retirement plan
- 401(k), 403(b) and 457(b) plans
- Why?
  - Having emergency savings is a persistent issue for employees
  - 24% have no money at all for an emergency expense
  - 39% have less than one month of income saved
    - 2022 research from the Consumer Financial Protection Bureau
  - Goal = no need for employees to pause their retirement savings while weathering a financial storm

ESAs: Limits

- Only Roth accounts
- Only employee contributions
  - Treated like deferrals for purposes of matching contributions—but match goes in retirement plan, not ESA
- Contributions capped at $2,500
  - Or a lesser limit established by the plan
- Safe investment account that protects the principal
- Highly compensated employees (HCEs) cannot participate
  - What if a non-highly compensated employee becomes a HCE?
    - No more contributions
    - Withdrawals are still ok

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ESAs: Excess Contributions & Withdrawals

- Dealing with excess contributions—plans may:
  - Treat contributions over $2,500 as Roth deferrals
  - Not accept excess contributions
- Withdrawals
  - Plans must allow participant to withdrawal at least once per month
  - Treated as tax-free qualified Roth distributions (no 10% premature distribution penalty)
  - Self-attestation
    - No proof of emergency needed
  - Plans cannot charge admin fee for first 4 withdrawals per year
    - Reasonable fee permitted thereafter

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ESAs: Auto-Enrollment & Termination

- Auto-Enrollment Permitted
  - Up to 3% of pay
- Termination
  - Employers can terminate ESA at anytime (no anti-cutback issues)
- Potential Issue
  - Contributing to ESA to get matching contribution, then immediately withdrawing their own contribution.
  - Plan sponsors may implement reasonable prevention measures
  - Likely will need additional regulatory guidance

Paper Statements

- At least one benefit statement per year must be provided on paper
  - Can deliver electronically if participant opts in
- Exception for DB plans:
  - One paper statement every 3 years
- Effective for plan years beginning after December 31, 2025

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Online Searchable Databases

- Within 2 years, DOL to establish an online lost & found for retirement accounts
  - Will allow participants to find their retirement savings after mergers, change in administrators, etc.
- Applies to plans subject to ERISA vesting (i.e., plans that must file a Form 8955-SSA)

Elimination of Variable Rate Premium Indexing

- PBGC variable rate premiums for single employer plans are subject increase to take into inflation into account
- Under SECURE 2.0 the indexing of premiums for inflation will end and variable rate premiums will be fixed at $52 per $1,000 of unfunded vested benefits
- This change is effective December 29, 2022

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Transfers of Excess Assets to Fund Retiree Health Accounts Extended

- Under current law if a pension plan is more than 125% funded a transfer of excess pension assets to an account under the plan to fund retiree health and/or life insurance benefits reasonably estimated to occur over a transfer period is permitted under IRC Section 420. This options was to expire December 31, 2025.
- SECURE 2.0 extends the date these transfers will be permitted to December 31, 2032.
- SECURE 2.0 also provides that if the transfer does not exceed 1.75% of plan assets, the transfer can be made if the plans surplus is at least 110% (instead of 125%).

Lump Sum Window Disclosures

- Expanded disclosures required to be provided to participants at least 90 days prior to the window opening. The disclosures must include plain language explanations about how the lump sum is calculated, whether early retirement subsidies are included, and a description of the other available options.
- Information (number of eligible participants and beneficiaries, length of the window, how the lump sum was calculated and sample participant notices) must be submitted to the DOL and PBGC at least 30 days prior to the window opening. A post-window report within 90 days following the closing of the window regarding the individuals who participated in the window must also be provided to the DOL and PBGC.
- The new rules must be made effective within one year after final regulations are issued (DOL is required to publish regulations no earlier than December 29, 2023).

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Mortality Improvement Rate Assumptions Limited and More Aligned With Social Security

- SECURE 2.0 provided a cap (0.78%) on the rate at which mortality can be projected to improve at any age for purposes of determining the contribution required to satisfy ERISA's minimum funding requirements. The change is effective December 29, 2022, for valuation dates occurring on and after January 1, 2024.

Cash Balance Plans Variable Interest Crediting Rate

- Cash balance plans that use variable interest crediting rates can use a reasonable projected interest crediting rate, up to a maximum of 6%.
- Effective for Plan years beginning after December 29, 2022.

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Annual Funding Notice Changes

- The Annual Funding Notice is being enhanced to require additional information on funded status, plan assets, liabilities and other information. Effective for plan years beginning after December 31, 2023

Timing of Plan Amendments

- Amendments must be adopted by the last day of the first plan year beginning on or after January 1, 2025
  - December 31, 2025 for calendar year plans

Thank You!

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